

Criminal Laws (Amendment)  
Act 2023

Report 2023-01



Human Rights  
Commission of Pakistan

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# Introduction

The Human Rights Commission of Pakistan (HRCP) has long argued that the country's blasphemy laws [Sections 295–298 of the Pakistan Penal Code (PPC) that relate to 'offences against religion'] are problematic because they are prone to misuse, promote the vested interests of far-right religious groups and widen the scope for persecution of religious minorities and sects by stoking intolerance and communalism.

In this context, the proposed Criminal Laws (Amendment) Act 2023—which amends Section 298-A of the PPC on the 'use of derogatory remarks' with respect to holy personages and increases the punishment for offences under this law—is likely to compound the problems mentioned above.

This report scrutinizes the proposed act vis-à-vis constitutional and international legal standards and safeguards as set out in the International Covenant on Civil and Political Rights (ICCPR) and examines the implications of such legislation for the criminal justice system. The analysis also draws on expert opinions expressed by the offices of the Special Rapporteurs on Freedom of Religion or Belief and Freedom of Expression.

# Scope of the law

The Criminal Laws (Amendment) Act 2023 was passed by the National Assembly on 17 January 2023 in the presence of a small number of members of the house—fewer than required to fulfil the quorum. In February, the then human rights minister, Riaz Hussain Pirzada, recommended that the bill be rolled back because its purpose was to ‘please a specific group’ and it had been approved without ‘fulfilling the norms of parliamentary proceedings’.<sup>1</sup>

However, on 7 August 2023, the bill was passed by the Senate of Pakistan, although several members of the house insisted that the bill be referred to a parliamentary committee for review. The bill was returned to Parliament by the president on 15 August 2023 and thus has not yet been passed into law. If the bill is subsequently considered in a joint session and is passed by the majority, it will be deemed to have been passed by both houses and sent to the president for assent once again. Essentially, the amendment increases the punishment for using derogatory remarks against revered personalities—including the Prophet’s (PBUH) family, wives and companions, and the four caliphs—from three years’ imprisonment to at least 10 years.

The original text of Section 298-A, which was added to the PPC by Ordinance XLIV of 1980, reads as follows:

**‘298A. Use of derogatory remarks, etc., in respect of holy personages.** Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (*Ummul-Mumineen*), or members of the family (*Ahle-bait*), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (*Khulafa-e-Raashideen*) or companions (*Sahaaba*) of the Holy Prophet (peace be upon him) shall be punished with imprisonment

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<sup>1</sup> <https://www.dawn.com/news/1769073>

of either description for a term which may extend to three years, or with fine, or with both.<sup>2</sup>

The proposed amendments to Section 298-A and Schedule II of the Code of Criminal Procedure are as follows:

‘In section 298-A, for the words “three years, or with fine, or with both” the words “imprisonment for life which shall not be less than 10 years” shall be substituted.’

Accordingly, if the bill is passed and becomes an Act of Parliament, Section 298-A will read as follows [amendment underlined]:

**‘298A. Use of derogatory remarks, etc., in respect of holy personages.** Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (*Ummul-Mumineen*), or members of the family (*Ahle-bait*), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (*Khulafa-e-Raashideen*) or companions (*Sahaaba*) of the Holy Prophet (peace be upon him) shall be punished with imprisonment of either description for a term which may extend to imprisonment for life which shall not be less than 10 years.’

The amendments to Schedule II, Act V of 1898 in the Code of Criminal Procedure are explained below:

- In column 4, the word ‘ditto’ (referring to ‘summons’) has been replaced with the word ‘warrant’.
- In column 5, the word ‘ditto’ (referring to ‘bailable’) has been replaced with the word ‘non-bailable’.
- In column 7, the words ‘for three years or fine or both’ have been replaced with the words ‘which may extend to life imprisonment and shall not be less than ten years’.
- In column 8, the word ‘ditto’ (referring to a magistrate of first or second class) has been replaced with the words ‘court of sessions’.

If the proposed act becomes an Act of Parliament, the tabular statement of offences in the Code of Criminal Procedure (Act V of

<sup>2</sup> <https://pakistancode.gov.pk/pdf/files/administratord5622ea3f15bfa00b17d2cf7770a8434.pdf>

1898) in Schedule II, against Section 298-A, will read as follows [italics added]:

1	2	3	4	5	6	7	8
Section	Offences	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily be issued in the first instance	Whether bailable or not	Whether compound able or not	Punishment under the PPC	By what court triable
298-A (original)	Use of derogatory remarks, etc., in respect of holy personages	May arrest without warrant	Ditto ( <i>referring to summons</i> )	Ditto ( <i>referring to bailable</i> )	Not compound able	Imprisonment of either description for three years or fine or both	Ditto ( <i>referring to magistrate of first or second class</i> )
298-A (amended)	Use of derogatory remarks, etc., in respect of holy personages	May arrest without warrant.	Warrant	Non-bailable	Not compound able	Imprisonment of either description which may extend to life imprisonment and shall not be less than ten years	Court of sessions

National Assembly member Maulana Abdul Akbar Chitrali, who tabled this bill in January 2023, has argued in the bill's Statement of Objects and Reasons that the incidence of blasphemy has increased online in general and on social media platforms in particular. Additionally, Mr Chitrali has said that 'disrespecting' the Prophet's (PBUH) companions 'promotes terrorism and disruption' in society.

He has also argued that offences such as defamation and theft, deemed 'less serious' crimes, carry harsher punishments than blasphemy under Section 298-A, which remains nominal and is a bailable offence. Mr Chitrali's rationale for this amendment is that the nominal punishment prescribed in this case not only moves people to repeat the offence, but also encourages people to disregard the law and attempt to punish offenders themselves. Finally, he has argued in the Statement of Objects and Reasons that the amendment should be read with Section 295-C as the crime

under Section 298-A is similar to 295-C, implying that the death penalty should be the actual punishment.

# Analysis

Overall, the bill is likely to tighten the chokehold on religious minorities and sects by curbing their freedom of expression and freedom of thought, conscience and religion. Of particular concern is the undue haste with which the bill was passed by both houses, the fact that its passage in the National Assembly did not fulfil the constitutional requirement of a quorum and that the bill has not, at any stage, undergone further deliberations by a parliamentary committee in spite of valid concerns raised by the human rights minister. Additionally, the fact that it gives the executive and judicial branches of the state increased discretionary powers—by making offences under Section 298-A non-bailable and triable in the sessions court—is cause for concern.

## Necessity of law

First, the proposed act and its objects and reasons fail to establish the necessity of the law. Instead, the objects and reasons contain contradictory statements that link ‘nominal’ punishment (three years under the original Section 298-A) with an increased likelihood of people taking the law into their own hands. This is neither logical nor based on evidence. Moreover, the National Assembly member’s opinion that offences under Section 298-A should be equated with Section 295-C (which carries the death penalty) could make blasphemy allegations more potent and trigger mob violence, even if this opinion is not part of the law itself.<sup>3</sup>

## Freedom of religion or belief

The bill contravenes the 2014 Supreme Court judgment, which observes that ‘By freedom of religion and belief is meant the right of a person to follow a doctrine or belief system which, in the view of those who profess it, provides spiritual satisfaction. However, it is

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<sup>3</sup> HRCPC has observed that the number of fatal attacks against persons accused of blasphemy have risen since the introduction of the death penalty to the blasphemy laws.



impossible to define the term “religion” in rigid terms. The freedom of religion must then be construed liberally to include freedom of conscience, thought, expression, belief and faith [italics added].’ In this context, the bill is likely to encourage frivolous litigation targeting sects that hold a difference of opinion on holy personages in Islam.

Additionally, the bill does not meet the criteria for limitations specified by the Special Rapporteur on Freedom of Religion or Belief in 2019, who urges states to adopt ‘a restrained approach in addressing tensions between freedom of expression and freedom of religion or belief,’ adding that such criteria should ‘recognize the rights of all persons to the freedoms of expression and manifestation of religion or belief, regardless of the critical nature of the opinion, idea, doctrine or belief or whether that expression shocks, offends or disturbs others, so long as it does not cross the threshold of advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.’<sup>4</sup>

### Freedom of expression

Under Article 19 of the ICCPR, the bill infringes on the fundamental right to freedom of expression, the right to hold opinions without interference, and the right to seek, receive and impart information and ideas of all kinds through any medium. While these rights are limited by certain restrictions under Article 19(3) pertaining to national security, public order, public health and morals, such restrictions must be demonstrably necessary and proportionate—a criterion the bill does not appear to meet.

Citing the Human Rights Committee, the Special Rapporteur on Freedom of Opinion and Expression observed in 2019 that ‘prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible’ with the ICCPR ‘except in cases in which blasphemy also may be defined as advocacy of religious hatred.’ The proposed bill does not appear to meet this threshold. It is also worth recalling that the Special Rapporteur’s report notes that blasphemy laws can be problematic

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<sup>4</sup> <https://www.ohchr.org/en/press-releases/2019/03/un-expert-urges-states-protect-mutually-reinforcing-freedoms-expression-and>

'because of the risk they pose to debate over religious ideas and the role that such laws play in enabling Governments to show preference for the ideas of one religion over those of other religions, beliefs or non-belief systems.'<sup>5</sup>

### Implications for criminal justice system

In general, blasphemy cases are often lodged by the police under pressure from far-right clerics or complainants with personal vendettas or to stem the risk of mob violence following mere allegations of blasphemy. In such cases, the likelihood of a flawed investigation increases as does the likelihood of violations of the right to due process. Specifically, the bill makes it more difficult for the accused to obtain statutory bail, which will now be granted at the discretion of the court rather than as a legal right. These concerns also reflect violations of the right to liberty and fair trial under Articles 9, 10 and 14 of the ICCPR.

Reinforcing the blasphemy laws through this bill is likely to create an even more hostile environment not only for those accused of offences under Section 298-A, but also for those investigating, defending and adjudicating such cases. This is bound to affect the extent to which the accused has access to the safeguards provided in Articles 4, 9, 10 and 10-A of the Constitution.<sup>6</sup> In such an environment, abuses of due process are highly likely, including frivolous first information reports, the use of vague blasphemy statutes and judicial precedent, low standards of evidence required for conviction, and the manner in which allegations are often uncritically accepted by the police, prosecuting authorities and even judges.

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<sup>5</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/308/13/PDF/N1930813.pdf?OpenElement>

<sup>6</sup> These pertain, respectively, to individuals' right to be dealt with in accordance with the law, security of person, safeguards against arrest and detention, and the right to fair trial.

# General recommendations

The proposed amendment is now due to be reconsidered by Parliament in a joint sitting, where it may be passed if the majority of members of both houses, present and voting, agree. At this stage, the bill should not be passed.

Other general recommendations are outlined below:

- A serious and concerted debate should be initiated inside and outside Parliament on possible reforms to the blasphemy laws to make them compatible with constitutional and international human rights standards.
- The legislature should adhere strictly to the 2014 Supreme Court judgement (PLD SC 699), which restricts the powers of the government to legislate on negative rights.
- The federal government should respect and fulfil the safeguards related to freedom of expression and freedom of religion or belief under the ICCPR.
- The federal government should strengthen laws on hate speech but with due consideration for people’s fundamental right to freedom of expression.
- Sections 295-A and 298-A should be removed from the list of scheduled offences under the Anti-Terrorism Act 1997.

### ***HRCP Legislation Watch Cell***

*Instituted in 2022, the Legislation Watch Cell is an initiative of the Human Rights Commission of Pakistan (HRCP). The Cell aims to monitor and analyse legislation, rules and procedures in the form of draft bills and amendments introduced by the federal and provincial assemblies each year that warrant attention from a human rights perspective, especially with respect to women, transgender persons, vulnerable labour groups, religious minorities, and the incarcerated population.*

*The Cell comprises HRCP staff members, an independent legal consultant, and an advisory committee composed of legislators, lawyers and other members of civil society. HRCP seeks to publish quarterly reports through this exercise that encompass the analysis, findings and recommendations of the Cell.*



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